

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PM14ME-63917

T.G.,

Complainant,

v.

Rutgers University Graduate School
of Social Work,

Respondent.

Administrative Action

FINDING OF NO PROBABLE CAUSE

On June 17, 2013, T.G. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that the Rutgers University Graduate School of Social Work (Respondent) discriminated against him based on disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, when it declined to readmit him to its graduate program. Respondent denied the allegations of disability discrimination in their entirety. After reviewing his agency's ensuing investigation, the DCR Director now finds as follows.

Background

In the summer 2010, Complainant began taking classes in Respondent's School of Social Work's Masters of Social Work (MSW) Program. After three semesters, he had a cumulative GPA of 3.571. In the fall 2011 semester, he failed a required course, Field Practicum III, prompting Respondent to notify him that he was being dismissed from the MSW program for failing to "meet minimum academic standards." See Letter from Arlene M. Hunter, M.A., Associate Dean for Academic Affairs, to Complainant, Jan. 19, 2012. The Dean's letter told Complainant that he could appeal the decision. The letter provided insight into the factors that school officials would find persuasive in weighing the merits of any appeal,

i.e., evidence that the applicant recognized the reasons for his or her academic shortcomings and that he or she had formulated a plan to resolve those issues. The letter stated, in part:

This appeal must address your reason(s) for not achieving the minimum grade point average and you should describe how you have addressed and resolved the factor(s) that interfered with your academic success. Your appeal should demonstrate that you have thoroughly assessed your academic strengths and weaknesses . . . If you state that your inability to succeed academically is due to a nonacademic reason(s), you should specifically describe how you will be able to effectively balance academic and nonacademic responsibilities and demands in the future . . .

Ibid. The letter specifically advised Complainant to work “in consultation” with his academic advisor, Marian Diksies. Ibid.

Complainant filed two unsuccessful appeals.¹ On April 11, 2012, Complainant filed a third appeal. In that appeal, Complainant wrote that he wanted to give Respondent a “better understanding of where [he is] coming from” and disclosed some highly personal information such as revelations that his parents were divorced when he was young, that he was raised by a stepfather whom he resented, and that he was diagnosed with Asperger’s Syndrome when he was six years old. That was Respondent’s first notification of Complainant’s diagnosis.²

¹ For instance, on or about January 26, 2012, he filed an appeal in which he acknowledged that he had a “weakness for getting emotionally attached to young children, and it has caused much difficulty in [his] field work.” He wrote, “I will make it a point in the future to resist unhealthy and unprofessional attachments . . . I will try to do a better job this fall in my new placement, and I will make it a point to keep the field paperwork up to date . . . I’ve tripped and fallen in the academic world several times in the past, and I managed to get myself back on my feet.” See Letter from Complainant to Antoinette Farmer, Ph.D., Associate Dean, Jan. 26, 2012. That appeal was denied by way of letter dated February 7, 2012.

² Although Complainant wrote that the “lack of judgment reported by [his] field instructor” was caused by “attachments,” and that “difficulties with attachments are caused by [his] disability,” the focus of his appeal was his contention that his “field instructor was too demanding” and gave him an inaccurate and unfair evaluation. For example, he wrote:

She said that my writing skills were below the level of Master’s student. This cannot be true, because I have completed all of my class requirements except for field and one course. Also, she put in my field evaluation the incident of me walking in a dangerous neighborhood where there were shootings (too much unnecessary information). She put nothing positive in my evolution, when I had in fact done the work that she had asked me to do including the observations and treatment plans . . .

[See Letter from Complainant to Kathleen J. Pottick, Acting Dean, Apr. 26, 2012, p. 3]

In a letter dated April 26, 2012, Acting Dean Kathleen J. Pottick advised Complainant that his dismissal was being upheld, but stated that he could reapply for admission to the MSW Program at a future date.

The Present Matter

On or about January 12, 2013, Complainant applied for readmission to Respondent's MSW graduate program. In so doing, Complainant identified two personal "weaknesses," i.e., he wrote that he formed "unhealthy attachments, especially when working with young children," and that his "other significant weakness is over-proactivity." See T.G, Personal Statement, Jan. 12, 2013. He devoted the majority of his essay to those topics but also acknowledged that he "made a few mistakes" in his Field III class and said that "[s]ome of this was due to a medicinal imbalance." Ibid. His complete personal essay from his application is as follows:

It is January 12, 2013. Seven years and one day after a tragic event that occurred in Brooklyn, New York and set the seal on my decision to enter the field of Social Work. I feel it would be a waste of time to reiterate the events that led me to the School of Social Work, as this was previously mentioned in my appeal letters last spring, as well as several papers assigned in my undergraduate classes. Therefore, rather than dwell on events that have long passed, I would prefer to address the more recent issues at hand. In addition, I realize that I am diagnosed with Asperger's Syndrome, which is continuously being treated medicinally and therapeutically. Despite this, I am a strong believer in the strengths-based perspective. I don't care what the DSM-IV states that a person cannot do; I care about what the person can do. This diagnosis that was given to me at the age six may have explained some of my shortcomings in life, which have caused a few setbacks, but I believe that motivation is more powerful than any neurological diagnosis. In my opinion, the strongest and most debilitating DSM-IV diagnosis is no match for a passion. I have a passion for clinical social work, as well as working with victims of abuse and neglect, and I will do anything possible to obtain the legal credentials to practice psychotherapy.

Even though I feel strong in some areas of social work practice, I realize that there are a few weaknesses that have caused me some problems in the field. My most significant weakness is unhealthy attachments, especially when working with young children. This has caused much agony in the field and led to my low evaluation score in my field placement at Head Start. When I see someone young and vulnerable in pain, I tend to let my emotions take over my judgment. This was hardly an issue at Partnership for Children of Essex, because the clients were older. My other significant weakness is over-proactivity, this was more apparent in my placements with DYFS and Partnership for Children of Essex. Often when I am in the office waiting for someone to bring me into the field, I get antsy and try to do too much when I'm in the field. This may have been reflected in my

evaluations as poor boundaries. Despite these weaknesses, I feel strong in many other ways. When working with grade school aged children, especially in after school programs, I feel that it is easy to relate to their issues and they are able to understand me because their emotions and language are more developed. I feel that I am a strong advocate for children, because I am able to listen to them and work with them on certain issues that they are having with their peers or their parents. When I was working at the Boys and Girls Club of Trenton this past summer, I had a ten year old girl in my group who just started crying for what appeared to be something small. I talked to her a bit, and it turned out that she was missing her father who she had not seen for a long time only sees about once a year. When I got enough information from her I asked her 'What can we try to do so you can see your father?', and she said 'He only comes if my mom calls him', and I said to her 'How about you ask your mom to give him a call when you go home?', and she said 'I can ask her', I said 'Why don't you do that, and just tell her that you really miss him and that you want to see him, and also, come and see you more often if he hears that from girl'. The conversation had taken a little out of me, because my parents had divorced when I was nine, and I knew how she felt. The next day I asked her what had happened, and she told me that she had talk to her father and that he was coming to see her in a week. This made me feel very happy, because I had helped her get back in touch with an important person in her life. This was only a short example of some of what I have done at these programs, but I have never felt stronger as a clinician, and I stand by my performance. Even though this was a strong example, I do feel that my clinical skills need more practice. The perfect setting for me would be in a mental health agency working with children of grade school age from five to fourteen. I wanted to work in a school setting, but I have come to realize that there is very limited interaction between the social worker and the clients. After finishing my MSW, I plan to work for an agency in New York City or Connecticut with children who have been abused or neglected or are suffering from the loss of a relative. I am sure you are aware of the shootings at Sandy Hook Elementary School in Connecticut. Additionally, one of my friends in New York just recently lost her son in a shooting last week. I want to be able to work with people who were affected by this kind of tragedy, as well as abuse and neglect.

In regards to the previous issues this year including my Field Placement, I realize that I have made a few mistakes and these have caused some issues in my Field Placement. Some of this was due to a medicinal imbalance that I was struggling with. I am now continuously medicated properly and I am receiving therapy on a regular basis, and I believe that I am ready to finish my degree. I am not disputing the F that I received in Field III, however, I still believe that there was sufficient grounds for my appeal to be approved and for me to finish my MSW this year, especially considering that my GPA was, and still is, above 3.0 However this is water under the bridge, and I am hoping to move forward and begin a new field placement this fall. I will need a field placement that employs clinical practice in any setting working with at-risk youth, because I cannot improve my clinical skills if I cannot practice them. I will not let myself fail again, and I promise to do a better job in field this time.

I am kindly asking to be readmitted to this program. I have invested a great deal of money, in loans and from my father's estate to finish my Master's Degree. If dismissing me from the program was a necessary action, then I respect that, but I

would like to be readmitted to the program to finish the remaining nine credits that I need.

[Ibid.]

On May 24, 2013, Respondent told Complainant that it rejected his application. The basis for the instant action is Complainant's allegation that "despite successfully meeting all the criteria for readmission to the MSW program," he was denied readmission "solely because of his disability." [See Verified Complaint, Jun. 17, 2013, ¶¶ 4.4 & 6.1.]

The LAD makes it illegal for places of public accommodation such as public universities "directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privilege thereof, or to discriminate against any person in the furnishing therefore" on the basis of disability. N.J.S.A.10:-12(f).

Respondent argues that its decision was not based on any claimed disability. It contends that it denied Complainant's application for readmission because Complainant "did not demonstrate that he understood and took responsibility for the issues that led to his dismissal, and through it he did not show that he had given thought to how to ensure his future performance would improve in light of past shortcomings." [See Letter from Sarah A. Luke, Esq., to DCR, Aug. 28, 2013, p. 2]

DCR interviewed the administrators who were responsible for reviewing and evaluating applications for readmission to the MSW program: Associate Dean for Student Affairs/Director of Admissions Arlene Hunter and Associate Dean for Academic Affairs Antoinette Farmer. Hunter stated that she did not approve Complainant's application for readmission because she felt that he lacked professionalism and, by his own admission, formed unhealthy attachments to children in pain, which she described as a "red flag" signaling significant boundary and professionalism issues. Hunter noted that Complainant had boundary issues with another graduate student as well, and had trouble taking accountability for his missteps. She stated that the "key piece" in the re-admission application process is the personal statement. She said,

"We want [applicants for readmission] to assess and describe why it did not work the last time, that they have an understanding and a grasp and accountability and to tell us what they will do different, what they've been doing while they were gone, working to improve skills as a writer or researcher, and what their plan is to succeed."

Farmer concurred with Hunter's assessment. Like Hunter, she felt that Complainant failed to adequately address the shortcomings that led to his dismissal, and failed to outline specific steps he would put into place to be successful if given a second opportunity. Like Hunter, she stated that social workers must be able to appreciate and adhere to "professional rules and boundaries."

DCR also interviewed Complainant's Academic Advisor, Marion Diksies. She stated that she counseled Complainant during his appeal process and told him to clearly identify the challenges he faced and articulate an academic plan specifying what he intended to do differently to be successful. She stated that a critical skill for social workers in which Complainant appeared deficient was "self awareness," and that Complainant demonstrated an unwillingness or inability to take instruction or accept constructive criticism. For example, she stated that when told how to handle a situation, Complainant would respond, "No, you're wrong."

Complainant confirmed that Diksies advised him to demonstrate an appreciation for his prior failings. He wrote, "The person working with me was Marian Diksies, she sent me one or two emails saying what I should add to the letter, but evidently she didn't care to be much help, because I didn't get back in. She advised me to take more responsibility for what happened in Field III which I did, but as I said, my field instructor was very negative about my whole experience and did not point out any of the good points of my experience there." [See Email from Complainant to DCR, Mar. 4, 2014, 3:53 p.m.].

DCR reviewed the academic records that Respondent relied on in reaching its determination, including the field performance records from the class that Complainant failed. In

that class, Complainant was assigned to observe pre-school students in their classrooms at the Trenton Head Start program, interact with the students, serve as a resource for the teachers, and record his observations in a field portfolio. On November 18, 2011, Field Liaison Laura Lebenkoff visited the site to review Complainant's field portfolio and confer with Field Instructor Robin Wiley. Her resulting report was not favorable. For example, as part of that assessment, Lebenkoff was required to review and comment on Complainant's portfolio. Lebenkoff wrote:

Student Intern does not have a portfolio of recordings with comments written on them by his field instructor. He is behind in sending them to her, and student's recordings generally have not been done appropriately and/or of a quality commensurate with a second year student.

[See L. Lebenkoff, Field Liaison Agency Visit Report, Nov. 18, 2011, P. 1.]

The assessment required Lebenkoff to describe the relationship between Complainant and Wiley. Lebenkoff wrote, "[T.G.] has been receiving weekly supervision and they have a good rapport. There are numerous concerns that both the [Field Instructor] and I have regarding this student including delays in completing written work, poor boundaries, and limited insight regarding the seriousness of these issues." [Ibid.] The assessment form asked Lebenkoff if she could foresee any problems that would prevent Complainant from completing the placement in a satisfactory manner. Lebenkoff wrote:

While [T.G.] says he enjoys working with children and has been able to establish rapport with them, he has had some interpersonal issues with staff as well as poor written communication and follow through. This may impede his completing this placement in a satisfactory manner.

[Id. at p. 2.]

Similarly, in Wiley's first-hand assessment of Complainant's work with the Trenton Head Start program, she noted a number of concerns with Complainant's performance. She gave him the lowest rating (i.e., "poor") in four categories: "Uses Clinical Supervision and Consultation to Engage in Ongoing Self-Correction," "Uses Clinical Supervision and Consultation to Insure that Practice is Congruent with Social Work Ethics and Values," "Understands Common Ethical Dilemmas in Clinical Practice," and "Evaluates, Selects, and Implements Appropriate

Assessment, Intervention, and Evaluation Tools for Use with Various Target Populations,” and the second lowest rating (i.e., “fair”) in sixteen other categories. Her comments include:

In October, [Complainant]’s hours were decreased due to several incidents where he failed to follow directives or had some type of negative interaction with [Trenton Head Start] teaching staff. He was only allowed on site when Field Instructor was available for close supervision.

* * *

[T.G.] has engaged in “heated” debates with teaching staff over issues that are not related to his role as an intern. He has difficulty setting boundaries with some of the children he has observed which has caused him to make poor decisions (i.e. walking into a housing development where the center is located after being instructed not to do so due to high incidence of crime in the area.) When concerns are discussed in supervision, [T.G.] tends to justify his actions or state he didn’t think my directive was serious. He often does not take responsibility for his incorrect actions.

[See R. Wiley, Advanced Year Evaluation of Student Field Performance Direct Practice, Dec. 15, 2011.]

Wiley gave Complainant an overall “Marginal Pass,” but wrote that he was “not performing at the level of a ‘masters level’ student which is including, but not limited to poor decision making, difficulty setting appropriate boundaries, following agency protocol and submission of field placement paperwork requirements.” Ibid. Elsewhere, Wiley wrote:

[T.G.] is struggling in this field placement and I am not sure he is aware of this despite my efforts to bring concerns to his attention. As an MSW student, his writing, judgment and professionalism is much less than expected. I receive feed back from teachers and center directors regarding his behavior in the classroom with teachers and children. He seems to have difficulty staying in the roll of student/intern and not questioning the teacher’s authority. As his field instructor, I have addressed several issues with him which tends to result in my receiving several text messages and emails where he tends to justify his behavior or blame it on someone not liking him. He will listen to what is being said to him, but tends to ignore directives when it suits him.

[Ibid.]

In response to his rejection letter, Complainant sent an email to Hunter suggesting that her office behaved unethically from a financial perspective. He wrote:

Dean Hunter,

I just wanted you to be aware that I have an appointment at the Attorney General’s office in Trenton on Monday June 17th where I will be signing a Civil Rights complaint against the School of Social Work for Discrimination on basis of

Disability. If any admission decision changes between now and then, I will cancel my appointment.

I don't understand how this committee feels that it is ethical to admit a student, have no trouble asking thousand of dollars from them that's not even theirs, allow them to complete 54 credits, be nine credits away from graduation, then dismiss them over one failed course without allowing them to take it over against even though their GPA still meets the minimum academic requirements, then not even allow them to come back to finish what they started, and leave them paying back their loans with little to no employment.

[See Email from Complainant to Dean Hunter, May 25, 2013, 1:21 p.m.] He did not allege that his condition negatively affected his writing ability, timeliness, judgment, or professionalism. Nor did he indicate a need for an accommodation.

That focus on what he viewed as the financial inequity of the matter is consistent with his discussions with DCR. For instance, a DCR investigator seeking clarification for the basis of his claim, wrote to him as follows:

I had previously asked why you bothered to inform them about your diagnosis and you answered, "I told them to get back into the program (obviously)." But you never explained why you think it should have made a difference one way or the other? Please explain why you think that it should have made a difference.

[See Email from DCR to Complainant, Feb. 26, 2014, 10:55 a.m.]

Complainant replied:

[M]e telling them about my disability should have changed their attitude about my ability to be a social worker (their words were the my Field III evaluation says that I can't work with people). I don't think I should have even had to do that, my GPA was over 3.0 even after the F (3.57 before it), I was only nine credits from graduation, I had spent over 60,000 on this degree, and my field instructor at head start had given me a Marginal Pass that the school changed to a fail. I don't know how any judge cannot see this as unethical and even criminal.

[See Email from Complainant to DCR, Mar. 4, 2014, 4:13 p.m.]

In his discussions with Respondent and DCR, he did not indicate a need for an accommodation or provide any information to support his allegation that Respondent harbored a discriminatory animus. Rather, he appeared to suggest that because he successfully overcame a number of personal hurdles through perseverance and hard work—such as being a child of divorce and his diagnosis—he would be able to succeed in the MSW program as well. See, e.g., Letter from

Complainant to Farmer, supra, (“I’ve tripped and fallen in the academic world several times in the past, and I managed to get myself back on my feet.”).

According to a school official, Complainant was one among 63 students dismissed from the MSW program between 2009 and 2011 for an inability to meet academic requirements. Of six candidates who formally applied for re-admission, Respondent granted re-admission to only two persons.

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit a complainant’s allegations of the verified complaint.” N.J.A.C. 13:4-10.2. For purposes of that determination, “probable cause” is defined as a “reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe” that the LAD was violated. Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

Here, the Complainant did not offer any persuasive evidence that he was denied readmission to the MSW graduate program because of his disability. Respondent, on the other hand, produced evidence supporting its position that its decision was based on legitimate, non-discriminatory reasons, namely, Complainant’s failure to persuade school officials that he genuinely appreciated the issues that led to his dismissal and had formulated a substantive plan to address his academic deficiencies, e.g., writing, timeliness, judgment, ability to follow protocol, professionalism.

Diksies, like Dean Hunter, provided Complainant with a strategy to gain readmission, i.e., accept responsibility for his mistakes and propose an action plan that appeared reasonably calculated to improve his performance. His seeming disregard for that advice supports Respondent’s position that Complainant lacked sound judgment and/or simply refused to

acknowledge his mistakes and, therefore, made it appear unlikely that he would change his approach if allowed back into the graduate program. Respondent's claim that Complainant demonstrated an inclination to blame others rather than accept responsibility for his field performance is also corroborated by Complainant's own assessments. For instance, in an email to a DCR Investigator, he wrote:

You said that the reason that they said they didn't readmit me to the program was because I wasn't taking enough responsibility for what happened in my field placement, when most (but not all) of the responsibility for what supposedly happened in my field placement at the Trenton Head Start belongs to the staff there that complained about me. Most of them are very unethical and unprofessional, not to mention under qualified for preschool teachers. Jamie was fired from Head Start after her first year for getting pregnant (which is against the law), with her exit interview saying he didn't speak enough Spanish (she speaks very fluent Spanish and her husband is Mexican no less). Brian told me some shocking stories about the conduct of some of his colleagues and he had to leave for those reasons. He said that people talk about others and spread rumors about others, and his para was fired one year because she brought her husband into their workplace to threaten him. The purpose of this is to refute the explanatory note that Rutgers wrote to you and show that I wasn't given a fair grade for Field III . . .

[See Email from Complainant to DCR, Jun. 4, 2014, 10:45 a.m.]

Because Respondent's initial decision to dismiss Complainant from the MSW graduate program and its subsequent decisions to deny his appeals occurred outside the applicable statute of limitations, those decisions are not directly under review in the instant matter. See N.J.S.A. 10:5-18. However, they provide further support for Respondent's claim that it provided repeated opportunities for Complainant to take full responsibility for his academic shortcomings and to articulate a concrete plan designed to keep him from preventing the same mistakes, and that Complainant's repeatedly responded with a disinclination--or inability--to do so. Thus, Respondent's conclusion that Complainant never fully accepted that his dismissal was not the fault of, for instance, unethical college administrators, an overly demanding field instructor, an apathetic academic advisor, unethical preschool staff, etc., was supported by the record. Moreover, Respondent was waiting for Complainant to offer what Dean Hunter referred during her interview as a "specific battle plan," and not mere positive platitudes such as, "I will not let

myself fail again, and I promise to do a better job in field this time.” Ultimately, DCR takes no position as to whether Complainant would have been successful if readmitted into Respondent’s MSW program. It merely finds that the weight of the evidence did not support Complainant’s allegation that his disability was a factor in Respondent’s decision to not accept him back into the graduate program.³

Places of public accommodation must make “reasonable accommodations” to the limitations of a patron with a disability, including “making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability,” unless the place of public accommodation can demonstrate that the accommodation would impose an undue hardship on the operation. N.J.A.C. 13:13-4.11 (a). Here, Complainant did not allege that Respondent failed to provide him with a reasonable accommodation. Nor did he allege that his condition had any material effect on his performance. Rather, he appears to be arguing that he should have received credit for overcoming Asberger’s Syndrome and that same should have been considered evidence of his passion and character but that Respondent instead viewed his candidacy disfavorably because of the diagnosis. However, as set forth above, he produced no evidence, and none was uncovered during the investigation, to support the latter assertion. Indeed, the fact that Respondent dismissed him from its school and twice denied his appeals before it knew of his diagnosis strongly suggests that Respondent was not motivated by a discriminatory animus.

³ DCR’s role in such matters is not to second-guess a college’s admission decision or formulate its own independent assessment of whether admission should have been granted. Rather, DCR’s function is to determine if the decision at issue was the product of a discriminatory process or somehow tainted by a discriminatory animus.

WHEREFORE, it is on this 19th day of JUNE 2014, determined and found that no probable cause exists to credit Complainant's allegations of discrimination.



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS